

## **SJ 7--Examination of Requiring Criminal Background Checks for Direct Care Workers**

### **10 State Summary of Data Collection Regarding Appeals Processes and Recommendation for Appeals Process in Montana**

**March 2008**

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#### **10 State Summary:**

1. 7 States have an identified Appeal Processes (Alaska, Arizona, Idaho, Minnesota, New Mexico, Oklahoma and Oregon)
  - a. 3 limit the appeal to crimes which fall outside of their 'permanent' categories.
  - b. 4 use a committee structure to make decisions, while the other three involve a Commissioner or other designated department staff person.
  - c. 1 state limits appeals to areas involving their central abuse registries.
2. 2 States (Kansas and Nevada) limit the appeal process to the accuracy of the criminal record only. No other considerations are allowed.
3. 1 State—no response, nothing specific found in their on-line statutes.

#### **Discussion:**

During the February 2008 meeting, members reviewed the above information and requested follow up regarding the following questions:

1. Of the states above who limit their appeal to the criminal record only, how many people actually appeal the record? Of that number, how many are reconsidered?
  2. Of the states that have a formal appeals process, how many appeals are conducted?
  3. Of the states that have a formal process, what is the cost associated?
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# SJ 7--Examination of Requiring Criminal Background Checks for Direct Care Workers

## 10 State Data Collection Regarding Appeals Processes January 2008

### Alaska

- A. Appeals process is referred to as a *Request for Variance*.
- B. Appeals can only apply to crimes that are specified under the 10, 5, 3, or 1 year aged out categories. Appeals cannot be requested for those crimes listed as Permanent.

**Number of appeals: 2 appeals in 2.5 years.**

### Arizona

- A. Appeal process is known as *Good Cause Exception*.
- B. Every 'clearance' is based upon the issuance of a Fingerprint Clearance Card.
- C. Clearance is sought through the Board of Fingerprinting, which is part of the state Department of Public Safety.
- D. It appears that this division has a 'clearing house' system and compares the criminal record to the offenses that preclude a person from receiving a fingerprint clearance card.

**\* There were some inconsistent numbers between the two agencies contacted.**

**Arizona Department of Public Safety: Calendar year 2007**

- Number of applications completed: —18,019
- Number of 'clean applications'—16,636
- Number of restricted clearances—283
- Number of denials—1100

**Arizona Board of Fingerprinting:**

**The Board of Fingerprinting believes the number of denials is closer to 4000.**

**In FY 2007 they received 3236 requests for applications; these requests come from individuals whose card has been denied or suspended.**

**Of these, 92.73 % were approved. Over the years the approval rate has been as high as 80-90%.**

**Most approvals are actually made at an administrative level, with 20% being made through a formal hearing.**

**There are circumstances where an individual has been given a good cause exception and later commits an offense. The Board of Fingerprinting indicates there have only been a few dozen of these cases over the last several years.**

<b>%age of applications that were disqualified:</b>	<b>22%</b>
<b>%age of denials that were appealed:</b>	<b>80%</b>

## **Kansas**

The State of Kansas does not have an appeal process. There has so far been sort of a conscious effort to avoid establishing any type of appeals process. Kansas allows the individual to follow the appeal process established through the criminal justice legal system. If they are successful in getting a conviction overturned or expunged then officials will rescind the prohibition. Kansas does see a few criminal records that have been expunged each year on individuals that have been previously prohibited.

**Number of appeals (for record expunged) in last year: 10**  
**Number of appeals which were successful: 4**

**Individuals must file a court fee of approximately \$150.00 to have record expunged; they would also have to hire an attorney.**

## **Idaho**

- A. Appeals process is referred to as *Exemption Reviews*
- B. An individual can only request a review of a conditional denial (this would be like what we're referring to as "other than permanent" disqualifier). If a disqualifier falls into the 'unconditional' category, Idaho does not allow a review to occur.

### **FY2007**

**Number of Applications: 27,799**  
**Number of Applicants fingerprinted: 23,413**  
**Number of Applicants who withdrew: 169**

(These are people who come in to their fingerprint appointment, have disclosed a disqualifying offense, and decide to withdraw, rather than receive an Unconditional Denial.)

**Unconditional Denials Issued for Permanent disqualifying offenses: 73**  
**Unconditional Denials issued for 5 yr disqualifying offenses 98**

**\* %age of applications disqualified .6%**

**Number of appeals: 10**  
**Number of individuals who were successful at getting crimes expunged: 5**  
**Number of Conditional Denials Issued: 149**

(these are people who we found either a child protection case, or adult protection case, but did not have a disqualifying crime. These individuals had the opportunity to request an exemption review in order to explain their issue and show rehabilitation.)

**Number who did not request an exemption review and remained denied: 21**

**\*%age of denials appealed: 5.8%**

**Number of Exemptions Granted: 91**  
**Exemptions Denied: 37**  
**Number who appealed through formal contested case hearing: 3**  
**Number of appeal decisions upheld: 3**

### Minnesota

- A. Appeals process is referred to as ***Reconsideration***.
- B. Minnesota, depending upon the program, has several sources who make the disqualification determination—county agency, Commissioner of State Department, and private agencies (i.e., adoption...). *However the Commissioner is the only one that makes the decision to offer reconsideration. The Commissioner not only reviews criminal disqualifications, but also reviews disqualification concerning Maltreatment (is similar to our child and family services reviews) and disqualification concerning adoption/foster care family studies.*

Number of background checks completed:	226,000
Number resulting in disqualification:	7208 (3.1%)
Number of appeals:	2873 (40%)
Number of appeals that were given reconsideration:	2086 (72.6%)

### Nevada

Upon receiving information from their Central Repository of Criminal Records, any employee or independent contractor who has been convicted of a disqualifying crime shall be terminated from employment or not allowed to begin employment. **The only ‘appeal’ is regarding the accuracy of the criminal record.** According to the state law information, if the individual in question has already begun employment when the disqualifying criminal history is found, that person has a reasonable amount of time of not less than 30 days to correct the information. If the information cannot be changed or corrected, the person is terminated from employment.

**Department of Public Safety conducts the review; the health agency receives a ‘thumbs up/down’.**

Number of Checks completed:	21,374
(with approx. 3% failing either or both of the state or federal check)	

Number disqualified:	421 (1.9%)
Number of appeals:	62 (14%)
Number reversed:	16 (25%)

### New Mexico

- A. Appeals process is referred to as ***Administrative Reconsideration***.
- B. An individual who has received notification of a disqualifying criminal history record, may submit a written request for administrative reconsideration.

**\* Information was not available from New Mexico.**

### Oklahoma

- A. Licensed professionals are required as a condition of their license to undergo a criminal background check; as a result, Oklahoma limits background checks to persons designated as nurse aides and ‘non-technical’ workers.
- B. From the research conducted, it appears there is no formal appeal process with regard to criminal history disqualifiers, but the appeal process appears to apply to their abuse registry.

**\* Information was not available from Oklahoma.**

## **Oregon**

- A. All crimes listed in the statute are considered 'potentially' disqualifying, regardless of their permanent or aged out status.
- B. When an individual applies to be an employee in a facility, he/she undergoes a "fitness determination", which appears to include a review of the criminal record and other considerations. This is conducted by authorized entity which usually is the facility contact but can be the department in specific situations. If the individual does not have a criminal history, and the record check shows no other considerations, the individual can be approved.

**\* Information was not available from Oregon.**

### **Summary:**

**Only 4 of the 10 states gave us detailed and consistent information concerning the numbers of applications, the numbers denied and then those denials which resulted in appeal. Therefore, for the purposes of this summary, the department relied upon the information from those 4 states only.**

**An approximate combined total of 300,000 applications were made in these 4 states. Of those applications 11,800 applications (4%) resulted in denials due to disqualifiers.**

**Of the 11,800 denied applications, approximately 6181 or 52% were appealed.**